

SUPREME COURT OF INDIA

V.K.M. Kattha Industries Pvt.Ltd.

Vs.

State of Haryana

C.A.No.6792 of 2013

(P.Sathasivam CJI., Ranjana Prakash Desai and Ranjan Gogoi JJ.)

16.08.2013

JUDGMENT

P. SATHASIVAM, CJI.

1. Leave granted.

2. This appeal is directed against the judgment and order dated 08.07.2008 passed by the High Court of Punjab & Haryana at Chandigarh in CWP No. 13208 of 2007 whereby the High Court dismissed the petition filed by M/s V.K.M. Kattha Industries Pvt. Ltd.-the appellant-Company.

3. Brief Facts:

(a) The appellant-Company is an industrial unit engaged in manufacturing of kattha for various tobacco and non-tobacco products, having its office at Janti Kalan Road, Post Office Kundli, District Sonapat. Vide sale deed dated 10.05.1994, the appellant-Company purchased a running industrial unit comprised in Rect. No. 75, Khasra No. 25, Rect. No. 80, Khasra Nos. 5/1 and 6/2 total measuring 23 kanals 14 marlas and got it registered as a Small Scale Industrial Unit with the Director, Industries Department, Haryana. On 05.05.2003, the appellant-Company leased out the running industrial unit to one M/s Anand Agro Products.

(b) On 21.12.2005, Haryana Government Industries Department issued a notification under Section 4 of the Land Acquisition Act, 1894 (in short 'the Act') for acquisition of certain lands situated in Village Kundli and Village

Sirsa for a public purpose, namely, for the development of a Industrial Estate and the lands belonging to the appellant Company were covered in the said notification. The declaration under Section 6 of the Act was subsequently made on 29.12.2006 and the award was announced on 15.07.2007.

(c) Being aggrieved by the notifications dated 21.12.2005 and 29.12.2006, the appellant-Company preferred CWP No. 13208 of 2007 before the High Court. By order dated 08.07.2008, the High Court dismissed the writ petition.

(d) Being aggrieved of the same, the appellant-Company has preferred this appeal by way of special leave before this Court.

4. Heard Mr. Guru Krishna Kumar, learned senior counsel for the appellant-Company, Mr. Manjit Singh, learned Additional Advocate General for the respondent-State.

Contentions:

5. Mr. Guru Krishnakumar, learned senior counsel for the appellant- Company submitted as under:- (i) The notification under Section 4 (1) of the Act was not published in the locality wherein the land situate which prevented the appellant-Company from making objection under Section 5A of the Act. (ii) As the appellant-Company itself is a running industry on the date of the notification, the said land cannot be acquired for a public purpose, namely, for the development of Industrial Estate. (iii) The High Court committed an error in dismissing the writ petition filed by the appellant-Company herein on the ground that the same is not maintainable after the announcement of award, particularly, when the appellant-Company failed to file any objection under Section 5A of the Act. The decisions of this Court relied on by the High Court are not applicable to the facts of this case and are distinguishable. (v) Inasmuch as the respondent-State itself has excluded more than 76 acres of land and the appellant is running an industry even as on date, it ought to have excluded and such exclusion would not affect the execution of the Scheme.

6. On the other hand, Mr. Manjit Singh, learned Additional Advocate General appearing for the State of Haryana submitted that inasmuch as the land acquisition authorities have complied with all the formalities, the appellant-Company failed to file objection under Section 5A of the Act and the writ petition having been filed in

the High Court after passing of the award, the High Court is fully justified in dismissing the writ petition filed by the appellant-Company.

7. We have carefully considered the rival contentions and perused all the relevant materials.

Discussion:

8. Coming to the contention of learned senior counsel for the appellant about the dismissal of the writ petition by the High Court on the ground that the same has been filed after passing of the award, it is brought to our notice that all the four cases relied on by the High Court are inapplicable to the facts of the present case. The first decision relied on by the High Court is *Star Wire (India) Ltd. vs. State of Haryana & Ors.*, (1996) 11 SCC 698. In that case, notification under Section 4(1) of the Act was published in the Gazette on 01.06.1976, award was passed on 03.07.1981 and the aggrieved parties filed writ petition in the High Court only on 21.01.1994, i.e. after 13 years. Second decision relied on by the High Court in *Municipal Council, Ahmednagar & Anr. vs. Shah Hyder Beig & Ors.*, (2000) 2 SCC 48 wherein notification under Section 4(1) was published on 15.05.1971, award was passed on 26.04.1976 and the writ petition came to be filed on 21.10.1992, i.e., 21 years after the date of notification. Third decision relied on by the High Court is *C. Padma & Ors. vs. Dy. Secretary to the Government of Tamil Nadu & Ors.*, (1997) 2 SCC 627 wherein notification under Section 4(1) was published on 17.10.1962, acquisition proceedings became final and possession was taken on 30.04.1964, compensation was paid and accepted and writ petition was filed after 32 years. The last decision relied on by the High Court is *Swaika Properties (P) Ltd. & Anr. vs. State of Rajasthan & Ors.*, (2008) 4 SCC 695 wherein notification under Section 4(1) of the Act was published on 08.02.1984, possession was taken on 17.02.1987 and writ petition came to be filed on 10.03.1989. It is relevant to point out that the writ petition came to be filed after two years that too after taking over possession.

9. In the case on hand, notification under Section 4(1) of the Act was published in the official gazette on 21.12.2005, declaration under Section 6 of the Act was issued on 29.12.2006 and the award was passed on 15.07.2007. Challenging the said award, a writ petition was filed by the appellant-Company on 20.08.2007, i.e. within 5 weeks of the passing of the award. It is the assertion of the appellant-Company that possession of the said land is still vested with them. Taking note of the above factual scenario and of the fact that in the decisions relied on by the High Court, there was a huge delay in filing the writ petitions, such as 13 years, 21

years, 32 years and 2 years after taking over possession, hence, in the light of the fact that the appellant-Company has filed the writ petition within a reasonable time, namely, within 5 weeks of the passing of the award, we are of the view that all the 4 decisions referred to and relied on by the High Court are inapplicable to the facts of the present case. On this ground itself, the impugned order dismissing the writ petition is liable to be set aside. Accordingly, we hold that the Writ Petition filed by the appellant herein before the High Court cannot be simply dismissed on the ground of delay or laches or filed after passing of the award. The said issue depends upon the facts and circumstances of each case and in view of the fact that the appellant has approached the High Court within a reasonable time, it is but proper for the High Court to go into the merits of the claim of the appellant. In normal circumstance, the matter has to go back to the High Court for consideration of various points raised, however, in order to shorten the litigation and of the fact that necessary/required materials are available before this Court, we consider the case of both the parties on merits and give our reasons hereunder.

10. Regarding the contention relating to publication of notification under Section 4(1) of the Act, it is the claim of the appellant that since the same was not in accordance with the mandate provided in the Statute, the appellant-Company was not at all in a position to file their objection under Section 5A of the Act.

11. In order to answer the above claim, it is better to understand the Scheme of the Act and the benefits given to the land owners for which it is desirable to extract Sections 4, 5A and 6 of the Act which are as under:

“4. Publication of preliminary notification and powers of officers thereupon.—

(1) Whenever it appears to the appropriate Government that land in any locality is needed or is likely to be needed for any public purpose or for a company, a notification to that effect shall be published in the Official Gazette and in two daily newspapers circulating in that locality of which at least one shall be in the regional language, and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality (the last of the dates of such publication and the giving of such public notice, being hereinafter referred to as the date of the publication of the notification).

(2) Thereupon it shall be lawful for any officer, either generally or specially authorised by such Government in this behalf, and for his servants and workmen,—

[pic]to enter upon and survey and take levels of any land in such locality;

to dig or bore into the subsoil;

to do all other acts necessary to ascertain whether the land is adapted for such purpose;

to set out the boundaries of the land proposed to be taken and the intended line of the work (if any) proposed to be made thereon;

to mark such levels, boundaries and line by placing marks and cutting trenches; and,

where otherwise the survey cannot be completed and the levels taken and the boundaries and line marked, to cut down and clear away any part of any standing crop, fence or jungle:

Provided that no person shall enter into any building or upon any enclosed court or garden attached to a dwelling house (unless with the consent of the occupier thereof) without previously giving such occupier at least seven days' notice in writing of his intention to do so.

5A. Hearing of objections.—(1) Any person interested in any land which has been notified under Section 4, sub-section (1), as being needed or likely to be needed for a public purpose or for a company may, within thirty days from the date of the publication of the notification, object to the acquisition of the land or of any land in the locality, as the case may be.

(2) Every objection under sub-section (1) shall be made to the Collector in writing, and the Collector shall give the objector an opportunity of being heard in person or by any person authorised by him in this behalf or by pleader and shall, after hearing all such objections and after making such further inquiry, if any, as he thinks necessary, either make a report in respect of the land which has been notified under Section 4, sub-section (1), or make different reports in respect of different parcels of such land, to the appropriate Government, containing his recommendations on the objections,

together with the record of the proceedings held by him, for the decision of that Government. The decision of the appropriate Government on the objections shall be final.

(3) For the purposes of this section, a person shall be deemed to be interested in land who would be entitled to claim an interest in compensation if the land were acquired under this Act.

6. Declaration that land is required for a public purpose.—(1) Subject to the provisions of Part VII of this Act, when the appropriate Government is satisfied, after considering the report, if any, made under Section 5-A, sub-section (2), that any particular land is needed for a public purpose, or for a company, a declaration shall be made to that effect under the signature of a Secretary to such Government or of some officer duly authorised to certify its orders, and different declarations may be made from time to time in respect of different parcels of any land covered by the same notification under Section 4, sub-section (1), irrespective of whether one report or different reports has or have been made (wherever required) under Section 5-A, sub-section (2):

[pic]Provided that no declaration in respect of any particular land covered by a notification under Section 4, sub-section (1)—

(i) published after the commencement of the Land Acquisition (Amendment and Validation) Ordinance, 1967 (1 of 1967), but before the commencement of the Land Acquisition (Amendment) Act, 1984, shall be made after the expiry of three years from the date of the publication of the notification; or

(ii) published after the commencement of the Land Acquisition (Amendment) Act, 1984, shall be made after the expiry of one year from the date of the publication of the notification:

Provided further that no such declaration shall be made unless the compensation to be awarded for such property is to be paid by a company, or wholly or partly out of public revenues or some fund controlled or managed by a local authority.

Explanation 1.—In computing any of the periods referred to in the first proviso, the period during which any action or proceeding to be taken in

pursuance of the notification issued under Section 4, sub- section (1), is stayed by an order of a court shall be excluded.

Explanation 2.—Where the compensation to be awarded for such property is to be paid out of the funds of a corporation owned or controlled by the State, such compensation shall be deemed to be compensation paid out of public revenues.

(2) Every declaration shall be published in the Official Gazette, and in two daily newspapers circulating in the locality in which the land is situate of which at least one shall be in the regional language, and the Collector shall cause public notice of the substance of such declaration to be given at convenient places in the said locality (the last of the date of such publication and the giving of such public notice, being hereinafter referred to as the date of the publication of the declaration), and such declaration shall state the district or other territorial division in which the land is situate, the purpose for which it is needed, its approximate area, and, where a plan shall have been made of the land, the place where such plan may be inspected.

(3) The said declaration shall be conclusive evidence that the land is needed for a public purpose or for a company, as the case may be; and, after making such declaration, the appropriate Government may acquire the land in manner hereinafter appearing.”

12. Among the above provisions, Section 4 of the Act empowers the appropriate Government to initiate proceedings for the acquisition of land. Section 4(1) of the Act lays down that whenever it appears to the appropriate Government that land in any locality is needed or is likely to be needed for any public purpose or for a company, then a notification to that effect is required to be published in (i) the Official Gazette; (ii) two daily newspapers having circulation in that locality of which, one shall be in the regional language; and (iii) it is also incumbent on the part of the Collector to cause public notice of the substance of such notification to be given at convenient places in the locality. It is relevant to mention that the last of the dates of such publication and the giving of such public notice is treated as the date of the publication of the notification. In terms of Section 4(2), any officer authorized by the Government in this behalf and his servants or workmen can enter upon and survey and take levels of any land in such locality, dig or bore into the subsoil and can do all other acts necessary for ascertaining that the land is suitable for the purpose of acquisition. The officers concerned can set out the boundaries of the land proposed to be acquired and the intended line of the work, if any,

proposed to be made on it. They are also permitted to mark such levels, boundaries and lines by placing marks and cutting trenches and can cut down and clear away any part of any standing crop, fence or jungle for the same purpose. However, neither the officer nor his servants or workmen can enter into any building or upon any enclosed court or garden attached to a dwelling house without the consent of the occupier and previously giving such occupier at least 7 days notice in writing of their intention to do so.

13. In terms of Section 5A, any person interested in any land notified under Section 4(1) may, within 30 days from the date of publication of the notification, submit objection in writing against the proposed acquisition of land or of any land in the locality to the Collector. Thereafter, the Collector is required to give the objector an opportunity of being heard either in person or by any person authorized by him or by his pleader. After hearing the objections and making such further inquiry, as he may think necessary, the Collector shall make a report in respect of the land notified under Section 4(1) containing his recommendations on the objections and forward the same to the Government along with the record of the proceedings held by him. It is open to the Collector to make different reports in respect of different parcels of land proposed to be acquired.

14. Keeping the above principles in mind, let us consider the first submission made by learned senior counsel for the appellant-Company viz., the notification was not in consonance with the requirements laid down under Section 4(1) of the Act. Learned senior counsel for the appellant- Company argued before this Court that in the light of the language used under Section 4(1) of the Act, all the three modes of publication mentioned therein are mandatory. He further asserted that since the notification was not published at the conspicuous places of the locality concerned, neither the lessee of the appellant-Company nor the appellant-Company came to know about the same. It is also asserted that no individual notice was served. In view of the same, according to learned senior counsel, the appellant-Company was deprived of its valuable right to file objections under Section 5A of the Act. He further contended that, it is an opportunity given to the land owners or person in possession of lands to make a representation under Section 5A of the Act. To put it clear, the purpose of publication of the notification is two-fold, first, to ensure that adequate publicity is given so that land owners and persons interested will have an opportunity to file their objections under Section 5A of the Act, and second, to give the land owners/occupants a notice that it shall be lawful for any officer authorized by the government to carry out the activities enumerated in sub-section (2) of Section 4 of the Act. This position has been reiterated in several decisions of this Court vide *Khub Chand & Ors. vs. State of Rajasthan &*

Ors., (1967) 1 SCR 120, J&K Housing Board and Anr. vs. Kunwar Sanjay Krishan Kaul & Ors., (2011) 10 SCC 714 and Usha Stud & Agricultural Farms P. Ltd. & Ors. vs. State of Haryana and Ors., (2013) 4 SCC 210.

15. Learned Additional Advocate General appearing for respondent-State asserted that the authorities have complied with all the three modes of publication. To test the above statements, we verified the written statement of Shri L.B. Verma, District Revenue Officer-cum-Land Acquisition Collector, Sonipat filed on behalf of respondent No. 2 herein before the High Court. Though in para 6, it is stated that the notification was published in two daily newspapers, namely, National Herald dated 02.01.2006 in English and Amar Ujala in Hindi dated 31.12.2005 but there is no whisper about the publication of the substance of the notification in the locality as provided under Section 4(1) of the Act. Except the above said written statement dated 15.11.2007, no other material such as counter affidavit or reply had been projected before the High Court as well as before this Court in support of their stand. In fact, on 09.08.2010, when the matter was called for hearing, learned counsel appearing for the State submitted that “in view of the counter filed before the High Court, no separate counter is being filed here”. In view of the above, it is clear that in spite of knowing the specific ground raised by the appellant about the non- publication of the substance of the notification as prescribed under the Act in the locality concerned, neither the State nor the Land Acquisition Collector availed the opportunity of filing reply refuting the same. In such circumstances, we have no other option except to hold that there was no publication of the substance of the notification under Section 4(1) of the Act in the locality which is held to be mandatory. It is also relevant to point out that by effecting such publication in the locality, it would be possible for the person in possession, namely, either the owner or lessee to make their representation/objection in the enquiry under Section 5A. In addition to the same, such person “owner or occupier” is entitled to file their objections within 30 days from the date of publication in the locality and by non-publication of the same in the locality as provided under the Act, the owner or occupier loses his valuable right. For these reasons also, the acquisition proceedings are liable to be quashed.

16. Coming to the contention raised by learned senior counsel that the appellant-Company itself is running an industry on the date of the notification, we are of the view that there is no justification in acquiring a running industrial unit for industrialization of the area. By placing acceptable materials, the appellant-Company has demonstrated that the construction at the site in question is A-Class construction and the fact that Rector No. 75 itself, which is a substantial part of the area, has been left out from the acquisition, the impugned notifications qua the

running industrial unit cannot be sustained in law. The appellant-Company, in support of the same, has also placed copy of the sanctioned building plan of the Company dated 18.03.1994, copy of the sale deed dated 10.05.1994, copy of the communication of the Director, Urban Estates Development Haryana, Chandigarh dated 23.03.1982, copy of the certificate by the Haryana Financial Corporation dated 14.05.2003, copy of no objection certificate from the Haryana State Pollution Control Board dated 17.10.1996 and copy of lease deed in favour of M/s Anand Agro Products dated 05.05.2003. On going through the materials placed, we are satisfied that the appellant-Company has established that it is a running industrial unit even prior to the notification under Section 4 of the Act and the appellant has established its case on this ground also.

17. Coming to the last contention, viz., exclusion of more than 76 acres of land, in the writ petition as well as in the grounds of appeal, the appellant has furnished details of the area released from acquisition in Rector-75 itself which is as under:

S.No. Name of industrial Khasra No. Area left from Concern Acquisition

1. Natraj Stationery 75/11/2/2 -- Products Pvt. Ltd. 2/13 1-6

12/2/1 1-1

2. Moja shoes (Pvt) Ltd. 75/11/2 1-6

76/16

½ 0-6

3. Haryana Coir (P) Ltd. 75/12/2/1 2-14

75/13/1 4-0

11/2/1 1-4

12/1/1 1-6

75/12/2/1 2-14

As rightly pointed out, if the appellant-Company had the opportunity of participating in the enquiry under Section 5A, it would be open to the

Company to make a representation for exclusion like others and there would be every possibility for the State Government to accede to the request since the appellant-Company is running an industry which is similar to the public purpose for which lands were being acquired. During the course of hearing, learned senior counsel for the appellant has also brought to our notice an approved sketch about the excluded lands and location of the appellant-Company which is on the extreme corner of the acquired lands. In other words, even if the Government or the authority concerned excludes the lands of the appellant-Company, there would not be any difficulty in executing the scheme. The said claim of the appellant is acceptable.

18. Under these circumstances, we set aside the impugned order of the High Court dated 08.07.2008 and quash the land acquisition proceedings insofar as the appellant-Company is concerned. The Civil Appeal is allowed. No order as to costs.